

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHAWN MICHAEL MCCOWAN,

Defendant.

Case No. 2:20-cr-00151-JAD-EJY

Report and Recommendation

Re: Motion to Suppress (ECF No. 32)

Pending before the Court is Defendant's Motion to Suppress Evidence. ECF No. 32. The Court has considered Defendant's Motion, the Government's Response, and Defendant's Reply. ECF Nos. 36 and 38. The Court also held an evidentiary hearing on March 5, 2021, and has considered all testimony given and arguments made.

I. Background

There is no dispute that on October 23, 2019, at approximately 11:52 p.m., Defendant was parked in a no parking zone on a public roadway (Agate Avenue), near the intersection of Las Vegas Blvd., when Las Vegas Metropolitan Police Department ("LVMPD") Officer Lukas Turley¹ pulled up behind Defendant's vehicle.² Defendant's vehicle was sitting (not running) in a high crime area, had no lights or emergency flashers on, and there was no evidence the vehicle was in any distress.³ As Turley maneuvered his patrol vehicle behind Defendant's car (a Kia Forte), Defendant started his car and began to drive away.⁴ This prompted Turley to turn on his patrol vehicle siren causing Defendant to stop his car.⁵ Officer Turley's body camera footage shows his vehicle stopped behind Defendant's car at 11:52:06 p.m.⁶

¹ Hereinafter, the "Officer," "Officer Turley" or "Turley."

² Turley Testimony Time-Stamped (hereinafter "Test at __") 9:51:24-9:52:31.

³ *Id.* at 9:57:18-9:57:43.

⁴ *Id.* at 9:53:00-9:53:57; ECF Nos. 32 at 1 and 36 at 2.

⁵ *Id.* at 9:53:58-9:54:11.

⁶ All body camera cites reference the time elapsed on the video introduced by Defendant as Exhibit B.

1 During his testimony, Officer Turley explained he has patrolled the area around Agate
 2 Avenue near Las Vegas Boulevard for two-plus years; it is unusual to see cars parked along Agate
 3 Avenue; and, the location is a high crime area regularly discussed at daily briefings.⁷ Agate Avenue
 4 is bordered by a transient-frequented Emerald Suites Hotel known for narcotic trafficking, and the
 5 Manhattan apartment complex where “pimps and prostitutes” are known to live.⁸

6 Upon stopping his vehicle, Turley called LVMPD dispatch (“Dispatch”) providing
 7 Defendant’s license plate number and stating he had initiated a suspicious vehicle stop.⁹ Turley
 8 explained Dispatch automatically requested backup and ran Defendant’s license plate through
 9 California DMV.¹⁰ Turley stated nothing was thrown from Defendant’s car and he saw no furtive
 10 movements before he exited his patrol vehicle to approach Defendant.¹¹ Turley also stated that he
 11 had “probable cause” to make a traffic stop because Defendant was parked in a plainly marked no
 12 parking zone.¹²

13 Approximately thirty-seven seconds after stopping, Turley initiated contact with
 14 Defendant.¹³ As Turley approached the driver’s side of Defendant’s car, he asked Defendant to roll
 15 down the back windows.¹⁴ Turley wanted to know if there were others in the car and, if so, how
 16 many people were inside.¹⁵ As confirmed by the Body Cam, Officer Turley was working alone at
 17 almost midnight when he learned there were three people inside Defendant’s vehicle.¹⁶

18 Safety motivated Turley’s next set of questions.¹⁷ Turley asked all occupants of the car
 19 “what’s up guys” to which Defendant and two passengers—including a male passenger in the
 20 backseat and a female in the front passenger seat—appear to respond.¹⁸ The woman passenger and
 21 Defendant talk about why they are parked where they are, after which Officer Turley asked
 22

23 ⁷ Test. at 9:51:50-9:53:00:08; 9:57:43-9:58:25.

24 ⁸ *Id.*

25 ⁹ *Id.* at 9:54:20-9:54:34.

26 ¹⁰ *Id.* at 9:54:35-9:56:36.

27 ¹¹ *Id.* at 11:02:06-11:02:29.

28 ¹² *Id.* at 9:51:53-9:52:02; 9:57:26-9:57:28; 11:10:15-11:10:30.

¹³ Body Cam at 00:37.

¹⁴ *Id.*; Test. at 9:55:52-9:55:55.

¹⁵ Test at 9:55:55-9:56:02.

¹⁶ Body Cam at 00:37; Test. at 9:51; 9:55:58-9:56:10.

¹⁷ *Id.* 9:58:36-9:58:45.

¹⁸ Body Cam at 00:42-1:10.

1 Defendant for identification.¹⁹ While Defendant is getting to and pulling out his identification,
 2 Officer Turley asked if there are any weapons in the car, to which Defendant responded no.²⁰ In a
 3 five second interaction, Turley then asked the backseat passenger if he had identification to which
 4 the passenger said no, but that he had a credit card with his name on it.²¹ Officer Turley responded,
 5 “I just asked you. That’s cool.”²² At this time, Defendant still had not handed Turley his driver’s
 6 license.²³ Officer Turley next asked the passenger if he has ever had a driver’s license, which he did
 7 (or does) in Nevada.²⁴ Just as Defendant handed Officer Turley his driver’s license, the Officer
 8 asked the female passenger if she had ID on her. She did not.²⁵ Officer Turley then asked the back
 9 seat and front seat passengers for their names and dates of birth.²⁶ These interactions with
 10 Defendant’s passengers, including the time Turley was waiting for Defendant to gather and hand
 11 him his driver’s license, was less than one minute.²⁷ Excluding the time Turley was simultaneously
 12 waiting for Defendant’s driver’s license, the interaction, including writing down names and
 13 birthdates, took 40 seconds.²⁸

14 As evidenced by the Body Cam video, at no point during the exchanges between Turley and
 15 the passengers did either passenger questions why Officer Turley asked for their names. Neither
 16 passenger evidenced any objection to providing the information asked for by Turley. And, neither
 17 passenger refused to provide his/her name. Approximately one minute and forty-five seconds
 18 elapsed from the time Officer Turley first spoke with Defendant until he returned to his patrol car.²⁹

19 When Officer Turley returned to his patrol vehicle, his mobile data unit (the computer in the
 20 vehicle) had auto-populated with information regarding Defendant’s car registration, which
 21 confirmed Defendant was the owner of the car.³⁰ Officer Turley then entered Defendant’s Nevada

22 ¹⁹ *Id.* at 1:11.

23 ²⁰ *Id.* at 1:15.

24 ²¹ *Id.* at 1:18-1:23.

25 ²² *Id.* at 1:23.

26 ²³ *Id.* at 1:24.

27 ²⁴ *Id.* at 1:25-1:29.

28 ²⁵ *Id.* at 1:31-1:32.

29 ²⁶ *Id.* at 1:43-2:11.

30 ²⁷ *Id.* at 1:18-2:11.

²⁸ *Id.* at 1:31-2:11.

²⁹ *Id.* at 00:37-2:12.

³⁰ Test. at 9:59:51-10:00:28; 10:08:00-10:08:08. In his Motion, Defendant erroneously contended that Turley did not appear to check Defendant’s car registration. ECF No. 32 at 2.

1 driver's license into the mobile data terminal to determine if the license was valid and to look for
 2 warrants.³¹ Defendant's driver's license was propped up on the front of the mobile unit screen as
 3 Turley did this query.³² The query was entered on the same screen Turley uses in all traffic stops.³³

4 Upon entering Defendant's driver's license, Turley's computer screen automatically
 5 populated with information from the DMV, LVMPD's SCOPE, the National Crime Information
 6 Center ("NCIC"), and the Nevada Criminal Justice Information System ("NCJIS").³⁴ Turley did not
 7 recall what information he received regarding Defendant's driver's license, but testified it was not
 8 an issue.³⁵

9 Turley explained that as he moved the cursor on the mobile unit screen from one line to
 10 another, information from the source entity (e.g. NCIC or NCJIS) automatically populated at the
 11 bottom of the screen.³⁶ Turley further explained that the screen he reviewed to determine whether
 12 Defendant had any active warrants (Defendant did not) is the same screen that displayed Defendant
 13 was a convicted sex offender who failed to properly register under Nevada law and, therefore, had
 14 committed a felony.³⁷ This screen is obvious in the Body Cam footage as it displays red entries.³⁸
 15 Officer Turley testified that the red entries included the words "Failed" and "Felony" meaning
 16 Defendant failed his annual verification and that he was in violation of NRS 179D.550.³⁹ Turley
 17 did no special search for this information.⁴⁰

18 Turley testified that upon seeing Defendant had committed a felony, he decided to place
 19 Defendant under arrest.⁴¹ This was three minutes and forty-three seconds after Officer Turley started

21 ³¹ *Id.* at 10:00:27-10:00:42.

22 ³² Body Cam at 2:39. Despite Defendant's contention in his Motion to Suppress that Officer Turley searched the
 23 male passenger's information first, at the hearing Defendant conceded that Turley had no one's driver's license other
 than Defendant's license to input into the driver's license query, which was the first query Turley did on his computer.
Compare ECF No. 32 at 8 and Test. at 11:25:05-11:25:12; 11:34:29-11:34:36.

24 ³³ Test. at 10:29:03-10:29:14.

25 ³⁴ *Id.* at 10:00:50-10:01:04; 11:03.

26 ³⁵ Defendant erroneously contended that Turley did not appear to verify Defendant's driver's license. *Compare*
 ECF No. 32 at 2 and Test. at 11:34:10-11:34:17.

27 ³⁶ Test. at 11:26:13-11:26:56.

28 ³⁷ *Id.* at 10:01:04-10:01:16; 10:01:44-10:02:13; 10:30:12-10:30:22; 11:34:00-11:34:06.

³⁸ Body Cam at 3:43.

³⁹ Test. at 10:29:52-10:30:11.

⁴⁰ *Id.* at 10:01:05-10:01:16; 10:02:05-10:02:13; 10:29:28-10:29:45; 10:30:12-10:30:22.

⁴¹ *Id.* at 10:02:28-10:02:42; 10:30:45-10:30:51.

1 his Body Camera and just over three minutes after he first made contact with Defendant.⁴² At this
 2 juncture, the stop ripened from a suspicious vehicle with a traffic violation to a felony violation
 3 supporting a probable cause arrest.⁴³ Turley explained he turned off his Body Camera stating he
 4 intended to call his backup, who had not yet arrived, to explain who he had in the car and what he
 5 learned about that individual.⁴⁴

6 Turley did not immediately initiate Defendant's arrest.⁴⁵ Turley explained he would not
 7 effectuate an arrest alone when there were three occupants of Defendant's vehicle, two of whom did
 8 not have identification.⁴⁶ Importantly, the uncontracted evidence is that Turley ran the names and
 9 birth dates of Defendant's passengers while he was waiting for his backup to arrive.⁴⁷ Once backup
 10 (Officer Childs) arrived, Turley discussed the situation with Childs for "safety reasons," and they
 11 decided to approach the car to arrest Defendant.⁴⁸

12 After approaching Defendant's vehicle, Defendant exited his car and was placed in
 13 handcuffs.⁴⁹ Turley told Defendant he was being arrested for failing to register in compliance with
 14 Nevada sex offender laws.⁵⁰ Officer Childs also placed the male passenger, Andre Clark ("Clark")

16 ⁴² *Id.* at 10:30:51-10:31:00; Body Cam at 3:43.

17 ⁴³ On cross examination the defense asked Turley questions suggesting he did an impermissible criminal
 18 background search on Defendant. Test. at 11:28-11:30; 11:32; 11:45-11:46. In response, Turley explained that there is
 19 no sex offender database, but such information would display under NCIC or NCJIS as a warrant. *Id.* at 11:32:10-
 20 11:32:21. Turley stated that after reviewing Defendant's driver's license information he stopped on NCJIS, which
 21 showed no warrants, but instead showed, and would ordinarily show, the non-compliant sex offender information leading
 22 to Defendant's arrest. *Id.* at 10:30:12-10:30:22; 11:34:00-11:34:06; 11:37:19-11:37:56. Responding to questions,
 23 Turley confirmed that NCJIS *could* contain criminal history, but when the defense ask whether Defendant's criminal
 24 history was located or reviewed, Turley stated this occurred only as a result of Defendant's driver's license search. *Id.*
 25 at 11:35:30-11:35:57; 11:37:37-11:37:53; 11:46:46-11:47:02. There was no testimony that Turley did a specific search
 26 for or reviewed Defendant's criminal history except as would ordinarily be available when reviewing the return on a
 27 driver's license.

28 Defendant also introduced Exhibit E, a single page from the LVMPD manual with which Turley is familiar.
Id. at 11:39. This page contains information regarding conducting criminal history queries during traffic stops. However,
 the uncontradicted testimony is the only query done regarding Defendant was the entry of Defendant's driver's license
 yielding automatic results from various sources that included the sex offender registration information found on
 Defendant. *Id.* 10:01:04-10:01:16; 10:01:44-10:02:13; 10:30:12-10:30:22; 11:34:00-11:34:06; 11:37:19-11:37:56.
 There is no evidence that a Triple I search or separate search for Defendant's criminal history was done.

⁴⁴ *Id.* at 10:03:17-10:03:40; 10:31:24-10:31:38.

⁴⁵ *Id.* at 10:02:42-10:02:50.

⁴⁶ *Id.* at 10:02:51-10:03:14.

⁴⁷ *Id.* at 10:00:56-10:04:04; ECF No. 36 at 3.

⁴⁸ *Id.* at 10:05:05-10:05:48.

⁴⁹ *Id.* at 10:55:55-10:06:15.

⁵⁰ *Id.* at 10:06:16-10:06:30.

1 under arrest for his active warrants; and the female passenger, who had provided Turley a false name
2 and birthdate, was subsequently arrested on active warrants and possession of illegal drugs.⁵¹

3 Because Defendant was the only individual with a driver's license, and the car was parked
4 illegally on a public road, Turley called for a tow.⁵² In compliance with LVMPD policy, an
5 inventory was done before the car was towed.⁵³ Officer Childs did the inventory while Officer
6 Turley took notes.⁵⁴ Officer Childs completed the inventory sheet.⁵⁵ Two weapons were found in
7 the car during the inventory.⁵⁶ One was under the driver's seat and the second on a speaker within
8 reach of the backseat passenger, Clark.⁵⁷ On July 1, 2020, a federal grand jury, sitting in the District
9 of Nevada, issued a one count indictment against Defendant.⁵⁸

10 **II. The Parties' Arguments**

11 **A. Defendant's Argument.**

12 In closing argument, Defendant summarized the support for suppression as two-fold: Officer
13 Turley unlawfully prolonged the traffic stop when he (1) asked Defendant's passengers for
14 identification and dates of birth, and (2) investigated Defendant's criminal history and sex offender
15 registration without justification.⁵⁹ Defendant argued these tasks were unrelated to the traffic
16 mission, unsupported by reasonable suspicion, and added impermissible time to the stop.⁶⁰
17 Defendant contends that once information came up on his mobile data terminal after entering
18 Defendant's driver's license, Officer Turley could not scroll through that information to determine
19 if Defendant had active warrants (suggesting this information would show without having to do so)
20 or act on information learned because Turley was "limited to 'checking the driver's license,
21 determining whether there are outstanding warrants ..., and inspecting the automobile's registration
22

23 ⁵¹ *Id.* at 10:06:50-10:07:38.

24 ⁵² *Id.* at 10:07:42-10:08:17.

25 ⁵³ *Id.* at 10:08:08-10:08:47.

26 ⁵⁴ *Id.* at 10:08:47-10:09:07.

27 ⁵⁵ *Id.* at 10:09:06-10:09:41.

28 ⁵⁶ *Id.* at 10:09:41-10:09:57.

⁵⁷ *Id.* at 10:10:00-10:10:30.

⁵⁸ ECF No. 11.

⁵⁹ Closing Argument ("Closing") at 1:00:02-1:00:35; ECF No. 32 at 7.

⁶⁰ Closing at 12:56:58-12:17:09; 1:02:51-1:03:20.

1 and proof of insurance.”⁶¹ Defendant argued that Turley admitted Defendant had no active
 2 warrants, but searched Defendant’s criminal history adding time to the traffic stop without
 3 justification.⁶² Defendant takes issue with Turley asking Defendant’s passengers for their names
 4 and birth dates because, Defendant argues, this information would not make Turley safer.⁶³

5 Defendant does not dispute that Turley’s review of Defendant’s information revealed he was
 6 a registered sex offender or that he was in violation of NRS 179D.550 for failing to fulfill his annual
 7 verification requirements.⁶⁴ Defendant also does not dispute that violation of NRS 179D.550 is a
 8 felony (*see* NRS 171.124) authorizing his arrest.⁶⁵

9 B. The Government’s Argument.

10 After making a lawful traffic stop on Defendant’s car, obtaining Defendant’s driver’s and his
 11 passenger’s names and birth dates, Officer Turley “immediately used the computer in his car to input
 12 the information from ... [Defendant’s] driver’s license to conduct a records check.”⁶⁶ This standard
 13 records check revealed that Defendant was a registered sex offender in violation of NRS 179D.550,
 14 which is a felony.⁶⁷ Demonstrating Turley checked Defendant’s car registration through LVMPD
 15 Dispatch, and driver’s history through Nevada DMV, Turley’s testimony confirmed the argument

17 ⁶¹ ECF No 32 at 7-8 *citing Rodriguez*, 575 U.S. at 355; Closing at 1:01:27-1:02:04. The defense also argued that
 18 there was no evidence to support Officer Turley’s suspicious vehicle stop or that the location of the stop is a high crime
 19 area. Closing. at 12:54-12:55. As discussed below, the Court finds this argument lacks merit. The Court notes that
 Defendant admits Turley testified on direct and cross examination that, although he found the location and condition of
 Defendant’s car suspicious, he was also making a traffic stop based on Defendant’s illegally parked car. *Id.* at 12:56

20 ⁶² Closing at 1:04.

⁶³ ECF No. 32 at 7-8.

⁶⁴ *See* ECF No. 32.

21 ⁶⁵ *Id.* Nonetheless, in his Motion to Suppress, Defendant contended Officer Turley “deviated almost immediately
 22 from his traffic mission by running a background check” on Defendant’s passenger - Clark. ECF No. 32 at 8. Defendant
 23 stated that instead of completing the traffic mission, “Officer Turley began his traffic mission by investigating Andre
 Clark.” *Id.* Defendant argued that the “Communications Event Search,” attached as Exhibit C to his Motion, showed
 24 Officer Turley determined Clark “was a wanted suspect” six minutes after Turley made the traffic stop. *Id.* Defendant
 25 appeared to assume that “Turley must have detoured from his traffic mission in order to investigate Andre Clark” arguing
 26 this was “inversely related to any concern about officer safety.” *Id.* Defendant argued that it was only after the inquiries
 27 regarding Clark that Turley determined Defendant was a sex offender and noncompliant with his registration
 requirements. *Id.* 8-9. Defendant concluded his Motion by stating that because there was no “indication” Turley checked
 Defendant’s driver’s license, car registration or insurance, it appeared that “Turley deviated from his traffic mission
 almost immediately by investigating ... Clark and ... [Defendant] on non-traffic related matters.” *Id.* at 9. Each of these
 contentions was disproved during the evidentiary hearing (*supra* at 2-4) and were abandoned in Defendant’s closing
 argument to argue the almost immediate deviation from the traffic stop occurred when Turley asked Defendant’s
 passengers for identification. Closing at 1:00:05-1:00:35.

⁶⁶ ECF No. 36 at 2 *citing* Body Cam at 2:37; Closing at 12:47:32-12:48:30.

⁶⁷ *Id.* at 3, 5.

1 that he did not do any separate background check to locate Defendant's non-compliant sex offender
 2 status.⁶⁸ Citing to the Body Camera footage, the Government demonstrated that (1) Turley did not
 3 command once, let alone repeatedly, that Defendant's passengers provide their names or dates of
 4 birth, (2) the passenger's voiced no objection to Turley's request for this information, and (3) Turley
 5 stated "That's cool" when Clark said he did not have identification on him.⁶⁹

6 The Government proffered that this case meaningfully differs from the Ninth Circuit decision
 7 in *United States v. Landeros*.⁷⁰ The Government discussed the *United States v. Diaz-Castaneda*⁷¹
 8 and *United States v. Hicks*⁷² holdings that there is no Fourth Amendment violation when passenger
 9 information is requested, freely given, and does not measurably prolong a traffic stop.⁷³ The
 10 government also points out that Defendant's argument regarding Turley's check of Clark's
 11 identification completely bypassed the evidence showing Turley only had and checked Defendant's
 12 driver's license before checking anything regarding Clark.⁷⁴

13 The Government further argued the Court need not consider what occurred after Officer
 14 Turley had probable cause to arrest Defendant because everything after this point did not prolong a
 15 traffic stop, but pertained to the Defendant's probable cause arrest.⁷⁵ The Government points out
 16 that neither of Defendant's passengers is named in this case and neither has brought a motion to
 17 suppress evidence.⁷⁶ The Government contends that the inventory of Defendant's car was not
 18 challenged by Defendant at the evidentiary hearing, and that, in any event, the car had to be towed
 19 because it was on a public road and there was no licensed driver available to move the car.⁷⁷ The
 20 inventory was done prior to the tow, in compliance with LVMPD policy, resulting in the discovery
 21 of two handguns.⁷⁸

22
 23 ⁶⁸ Test. at 9:59:52-10:00:28; 10:08:00-10:08:08; 10:00:27-10:00:42; 10:01:04-10:02:13; 10:29:03-10:29:14;
 10:30:12-10:30:22; 11:35:30-11:35:37; 11:37:37-11:37:53; 11:46:46-11:47:02.

24 ⁶⁹ Body Cam at 1:18-1:23; 1:31-1:32; 1:43-2:11.

25 ⁷⁰ *United States v. Landeros*, 913 F.3d 862 (9th Cir. 2019); Closing at 12:40-12:42.

26 ⁷¹ 494 F.3d 1146 (9th Cir. 2007).

27 ⁷² Case No. 2:18-cr-00374, 2019 WL 2905047 (D. Nev. July 5, 2019).

28 ⁷³ Closing at 12:39; 12:43-12:44.

⁷⁴ *Id.* at 12:45:29-12:46:35.

⁷⁵ *Id.* at 12:46:41-12:47:30.

⁷⁶ *Id.* at 12:51-12:52.

⁷⁷ *Id.* at 12:52:30-12:53:37.

⁷⁸ *Id.*

1 C. Defendant's Reply in Support of Motion to Suppress.

2 In his Reply brief, Defendant argues that "[i]rrespective of the length and substance of
3 Officer Turley's queries, the officer deviated from, and consequently added time to, the stop when
4 he asked the passengers for their names and birthdates."⁷⁹ Defendant cites to *Landeros*, which held
5 that "[a] demand for a passenger's identification is not part of the mission of a traffic stop."⁸⁰
6 Defendant noted that the time between asking for Defendant's license and "finishing his notes,"
7 which consisted of writing names and birthdates, "was approximately 45 seconds."⁸¹ Defendant
8 concluded his Reply by arguing that because Defendant's arrest was unlawful based on an
9 impermissibly prolonged traffic stop, the inventory search of Defendant's car was unlawful requiring
10 suppression of the ammunition and handguns found in Defendant's car.⁸²

11 **III. Discussion**

12 A. Officer Turley was a Credible Witness, and there was Reasonable Suspicion for the
13 Investigatory Stop.

14 Officer Turley was a credible witness. His testimony was undisputed and supported by body
15 camera video. To this end, Defendant is wrong when he contends that there is no evidence to support
16 Turley's testimony that Agate Avenue near Las Vegas Blvd. is a high crime area and that Turley had
17 no lawful basis to make a suspicious vehicle stop. Turley testified that he has patrolled the area in
18 which Defendant was located for two-plus years, received regular daily briefings regarding crime in
19 the area (including drug trafficking and prostitution), it is unusual to see cars parked where
20 Defendant was parked, Defendant was illegally parked, the car was not running, there were no lights
21 on or hazards flashing, and there was no evidence the car was in distress.⁸³ Based on his training,
22 briefings, and years of experience, Turley testified that he found the condition and location of

23 ⁷⁹ *Id.* at 2.

24 ⁸⁰ 913 F.3d at 868 (emphasis added).

25 ⁸¹ ECF No. 38 at 3. Defendant also argued that in order for Turley to have discovered Defendant was out of
26 compliance with Nevada law requiring his annual sex offender registration requirements, Turley would have to engage
27 in something "akin to an ex-felon registration check ... or Triple I check" *Id.* at 4. Defendant contended that a
DMV inquiry would not "result in sex offender noncompliance information" and that Officer Turley must have had a
"hunch" that Defendant "had violated the law. *Id.* at 5. But, Defendant elicited no testimony regarding a "hunch," and
introduced no evidence to support these arguments. Attorney argument is not evidence. *United States v. Huntoon*, Case
No. CR-16-00046-001-TUC-DCB (DTF), 2018 WL 1755788, at *1 (D. Ariz. Apr. 12, 2018).

28 ⁸² *Id.* at 5-6.

⁸³ *Supra* at 1-2.

1 Defendant's car suspicious and in violation of a no parking zone.⁸⁴ The undisputed facts and Officer
 2 Turley's testimony demonstrate Turley properly relied on common sense and "probabilities"⁸⁵; and,
 3 that he did not need "to ignore ... [the] location [of Defendant's car] in determining whether the
 4 circumstances ... [were] sufficiently suspicious to warrant further investigation."⁸⁶

5 If Defendant is arguing that investigating a suspicious vehicle was Turley's "subjective
 6 intentions" and the traffic stop was a ruse, Defendant's argument fails because the subjective
 7 intentions of an officer "play no role in ordinary, probable cause Fourth Amendment analysis," and
 8 "the Fourth Amendment's concerns with 'reasonableness' allows certain actions to be taken in
 9 circumstance, whatever the subjective intent."⁸⁷ "[T]he standard for determining whether ...
 10 reasonable suspicion exists is an objective one; it does not turn ... on the subjective thought
 11 processes of the officer, so long as the facts known to the officer amount to reasonable suspicion."⁸⁸
 12 Further, "[t]he fact that the alleged traffic violation is a pretext for the stop is irrelevant, so long as
 13 the objective circumstances justify the stop."⁸⁹ For this reason, even assuming Officer Turley made
 14 a subjective determination regarding Defendant's vehicle being suspicious, well settled law
 15 establishes that "[a] traffic violation alone is sufficient to establish a reasonable suspicion."⁹⁰

16 The Court finds Officer Turley had reasonable suspicion to believe Defendant's car was a
 17 suspicious vehicle based on all the information available at the time of the stop.⁹¹ The determination
 18
 19

20 ⁸⁴ *Supra* at 2.

21 ⁸⁵ In *Kansas v. Glover*, __ U.S. __, 140 S.Ct. 1183, 1190 (2020), the Supreme Court stated that "the reasonable
 22 suspicion inquiry falls considerably short of 51% accuracy, ... for as ... [the Court] ha[s] ... explained, to be reasonable
 23 is not to be perfect." *Id.* (internal citations and quote marks omitted). In fact, "[r]emoving common sense as a source
 24 of evidence ... would considerably narrow the daylight between the showing required for probable cause and the less
 25 stringent showing required for reasonable suspicion." *Id.* (internal citations and quote marks omitted). "[O]fficers, like
 26 jurors, may rely on probabilities in the reasonable suspicion context." *Id.* (citation omitted).

27 ⁸⁶ Although "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to
 28 support reasonable, particularized suspicion that a person is committing a crime, ... officers are not required to ignore
 ... a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."
Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (internal citation omitted). "In reviewing the propriety of an officer's
 conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we
 cannot demand scientific certainty from judges or law enforcement officers where none exists." *Id.* at 124-25.

29 ⁸⁷ *Whren v. United States*, 517 U.S. 806, 813-14 (1996).

30 ⁸⁸ *United States v. Magallon-Lopez*, 817 F.3d 617, 675 (9th Cir. 2016) (internal citation omitted).

31 ⁸⁹ *United States v. Wallace*, 213 F.3d 1216, 1219 (9th Cir. 2000) (citing *Whren* 517 U.S. at 810).

32 ⁹⁰ *U.S. v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2000) (internal citations omitted).

33 ⁹¹ *Glover*, 140 S.Ct. at 1190; *Wardlaw*, 528 U.S. 123-25.

1 that a lone car, illegally parked at midnight, in a high crime area, neither running nor showing any
2 sign of distress, supports an objectively reasonable suspicion to investigate a vehicle.⁹²

3 B. The Valid Traffic Stop was not Impermissibly Prolonged.⁹³

4 1. *Requesting identifying information from Defendant's passengers was lawful*
5 *and justified by officer safety.*

6 A search without a warrant is “presumed to be unreasonable,” and therefore a violation of
7 the Fourth Amendment prohibition against unreasonable search and seizure, “unless it satisfies one
8 of the ‘specifically established and well-defined exceptions.’”⁹⁴ Analyzing the scope of the Fourth
9 Amendment in the context of a traffic stop, the United States Supreme Court issued its 2015 decision
10 in *Rodriguez v. U.S.*⁹⁵ The *Rodriguez* Court held that “[a] seizure for a traffic violation justifies a
11 police investigation of that violation.”⁹⁶ The “tolerable duration of police inquiries” during a traffic
12 stop depends on the “mission” of the stop—that is, “to address the traffic violation that warranted
13 the stop, ... and ... related safety concerns”⁹⁷ As stated by the Court, “[b]ecause addressing the
14 infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that
15 purpose.”⁹⁸ Authority for the seizure ends “or reasonably should have ended” when the “tasks tied
16 to the traffic infractions ... are completed.”⁹⁹

17 The *Rodriguez* Court also recognized that an officer’s mission during a traffic stop includes
18 inquiries such as “checking the driver’s license, determining whether there are outstanding warrants
19 against the driver, and inspecting the automobile registration and proof of insurance” because these

20 ⁹² *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (“in determining whether the officer acted reasonably ..., due weight must
21 be given ... to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience”);
22 *United States v. Lopez*, 757 Fed.App’x 589 (9th. Cir. 2018) (even assuming “the initial contact between the officers and
23 Lopez implicated the Fourth Amendment, the officers had reasonable suspicion to conduct an investigatory stop based
24 on the perceived violation of California Vehicle Code § 5200(a) and the 911 call that initially drew them to the scene)
citing *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013) (en banc) (reasonable suspicion is “not a
particularly high threshold”); *United States v. Sanchez-Sosa*, Case No. 10-20108-01-KHV, 2011 WL 663180, at *5 (D.
Kan. Feb. 14, 2011) (“[c]ourts recognize that a car parked in the lot of a closed establishment can contribute to an
officer’s reasonable suspicions) (internal citation omitted).

25 ⁹³ Parking violations justify the investigatory stop of a vehicle. *Choudhry*, 461 F.3d at 1100-01. Thus, Officer
Turley had reasonable suspicion to conduct an investigatory traffic stop on Defendant’s illegally parked car.

26 ⁹⁴ *Hicks*, 2019 WL 2905047, at *6 (citation omitted).

27 ⁹⁵ 575 U.S. 348 (2015).

28 ⁹⁶ *Id.* at 354.

⁹⁷ *Id.* (citations omitted).

⁹⁸ *Id.* (citations and quote marks omitted).

⁹⁹ *Id.* (citations omitted).

1 “negligibly burdensome precautions” ensure the safe and responsible operation of vehicles on the
 2 road.¹⁰⁰ *Rodriguez* made clear that “[t]he seizure remains lawful only so long as [unrelated] inquiries
 3 do not *measurably* extend the duration of the stop.”¹⁰¹ *Rodriguez* also recognizes that traffic stops
 4 may implicate “officer safety interest[s] because they “are especially fraught with danger to police
 5 officers.”¹⁰² “The terrifying truth is that officers face a very real risk of being assaulted with a
 6 dangerous weapon each time they stop a vehicle.”¹⁰³

7 Defendant relies heavily on the Ninth Circuit decision in *Landeros* to support his contention
 8 that any inquiries into Defendant’s passengers unlawfully prolonged this traffic stop. But, the facts
 9 in *Landeros* are considerably different from the facts here. In *Landeros*, an officer stopped a vehicle
 10 for speeding after which he asked two women in the backseat of the car for identification because
 11 the officer thought the women were violating curfew and underage drinking laws.¹⁰⁴ Thereafter,
 12 admitting he did not think the front seat passenger was underage, the officer nonetheless
 13 “commanded,” and “repeated his demand,” that the passenger, Landeros, provide identification,
 14 which Landeros refused to do.¹⁰⁵ The officer called for backup because Landeros refused to provide
 15 identification and, after the second officer arrived, he also asked Landeros to provide ID.¹⁰⁶
 16 Considering all of the circumstances surround Landeros’ eventual arrest and indictment, including
 17 “several minutes of additional questioning,” the Ninth Circuit concluded that “[a] demand for a
 18 passenger’s identification is not part of the mission of a traffic stop.”¹⁰⁷ It is this sentence upon
 19 which Defendant seizes to argue that when Officer Turley asked Defendant’s passengers if they had
 20

21 ¹⁰⁰ *Id.* at 355, 357.

22 ¹⁰¹ *Id.* (bracket in original, internal citations and quote marks omitted, emphasis added).

23 ¹⁰² 575 U.S. at 356. Consider the 1997 U.S. Supreme Court decision in *Maryland v. Wilson*, 519 U.S. 408, 413
 24 (1997), in which the Supreme Court stated, “Regrettably, traffic stops may be dangerous encounters. In 1994 alone,
 25 there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops.” *See also Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (“[A]pproximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile.”); *Theney v. City of Los Angeles*, Case No. 15-9602, 2017 WL 10743001, at *7 (C.D. Cal. June 19, 2017) (citing U.S. Department of Justice 2014 Statistics on Law Enforcement Officers Killed and Assaulted (available at <http://ucr.fbi.gov/leoka/2014/home>), stating: “In 2014, 4,022 officers were assaulted during traffic stops, and 9 officers were killed.”).

26 ¹⁰³ *U.S. v. Garcia*, 279 F.Supp.2d 294, 302 n.1 (S.D.N.Y. 2003) (citing Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted (1999)).

27 ¹⁰⁴ 913 F.3d at 864.

28 ¹⁰⁵ *Id.* at 865.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 868.

1 identification and obtained their names and dates of birth, an impermissibly prolonged traffic stop
2 occurred.

3 However, several cases decided after *Landeros* have distinguished the facts and conclusion
4 in that case from cases in which a passenger neither refuses nor questions an officer's request for
5 identification.¹⁰⁸ In fact, Ninth Circuit case law holds that a law enforcement officer may "ask
6 people [including passengers in cars] who have been legitimately stopped for identification without
7 conducting a Fourth Amendment search or seizure."¹⁰⁹

8 In *Hicks*, the District of Nevada summarized the basis for the holding in *Landeros* noting that
9 Landeros refused to provide an ID, or even his name, resulting in the officer calling for backup.¹¹⁰
10 When the second officer arrived, he too was unsuccessful when ordering Landeros to provide
11 identification.¹¹¹ "Both officer then repeatedly ordered Landeros to exit the car" ultimately leading
12 to the discovery of bullets in Landeros' pocket "during a consensual search."¹¹² Landeros was
13 thereafter indicted for being a felon in possession of ammunition.¹¹³ Stating that Landeros "lawfully
14 refused to provide his ID," but the officer's continued to detain him, the court concluded that "the
15 interactions with Landeros were clearly tangential to the traffic stop's mission" ¹¹⁴ Critically,
16 the court in *Hicks* did "not read" the Ninth Circuit's decision in *Landeros* "to categorically prohibit
17 officers from *requesting* a passenger's ID during a traffic stop without reasonable suspicion that he
18 had committed a crime."¹¹⁵

19
20 ¹⁰⁸ *Hicks*, 2019 WL 2905047, at *10 citing *Diaz-Castaneda*, 494 F.3d at 1152 (brackets in original); see also
21 *United States v. Crenshaw*, (discussing *Landeros* and *Evans*, and stating that "[t]he context of both cases was the
22 prolongation of a stop after a traffic infraction had been resolved to pursue additional investigations" while the defendant
Crenshaw was questioned during the traffic investigation); *United States v. Hampton*, 374 F.Supp.3d 1115, 1121 (D.
Kansas 2019).

23 ¹⁰⁹ *Hicks*, 2019 WL 2905047, at *10 citing *Diaz-Castaneda*, 494 F.3d at 1152. The court in *Hicks* noted that a
24 2011 unpublished Ninth Circuit case cited *Diaz-Castaneda* when "concluding that a police officer may also lawfully
conduct a records check on passengers using his or her identification." *Id.* citing *United States v. Evans*, 445 Fed.App'x
25 29, 31 (9th Cir. 2011) (internal brackets omitted). Further, in *Landeros*, the Ninth Circuit found it did not need to reach
the question of whether the decision in *Rodriguez* overruled the holding in *Diaz-Castaneda* because "[r]egardless of
whether the *first* request for Landeros's identification was lawful, law enforcement's refusal to take 'no' for an answer
was not." *Landeros*, 913 F.3d at 870.

26 ¹¹⁰ *Hicks*, 2019 WL 2905047, at *10 (citation omitted)

27 ¹¹¹ *Id.* (citation omitted).

28 ¹¹² *Id.* (citation omitted).

¹¹³ *Id.*

¹¹⁴ *Id.* at 11.

¹¹⁵ *Id.* (emphasis in original).

1 Here, Officer Turley did not demand or command Defendant's passengers provide him ID
 2 or their names and dates of birth. Rather, he asked and they readily complied.¹¹⁶ There was no
 3 objection or concern expressed by either passenger made in response to Turley's request.¹¹⁷ Further,
 4 the request for Clark's ID occurred simultaneously with Turley waiting for Defendant to hand Turley
 5 his identification.¹¹⁸ When Clark said he did not have ID, but had a credit card with his name on it,
 6 Turley said: "That's cool. I'm just asking."¹¹⁹ This interaction took five seconds. Once Defendant
 7 handed Turley his ID, the Officer asked the front seat passenger if she had ID. She did not.¹²⁰ This
 8 interaction took two seconds. Officer Turley then asked each passenger for his/her name and birth
 9 date, which took 28 second.¹²¹ Officer Turley testified that he sought this information for officer
 10 safety reasons.¹²²

11 An interaction with a passenger while waiting for a driver to gather his identification cannot
 12 prolong a traffic stop.¹²³ Thus, the five seconds during which Officer Turley asked Clark for
 13 identification, and learned Clark had only a credit card on him, had no impact on the length of
 14 Defendant's traffic stop. Similarly, when Officer Turley followed up by asking the passengers for
 15 their names and dates of birth, to which neither objected, he was doing so to determine with whom
 16 he was interacting. This "*de minimus* ... intrusion," arising from "danger to ... [O]fficer [Turley]
 17 associated with the traffic stop itself" did not unlawfully prolong this traffic stop.¹²⁴ Turley was
 18 alone, at night, in a high crime area, approaching an unlawfully parked vehicle with three people
 19 inside. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the
 20 seizure's 'mission'—to address the traffic violation that warranted the stop, ... *and attend to related*
 21 *safety concerns*" ¹²⁵ Precisely for safety reasons Officer Turley took "certain negligibly

116 Body Cam at 1:18-2:11.

117 *Id.*

118 *Id.* at 1:18-1:23.

119 *Id.* at 123.

120 *Id.* at 1:31-1:32.

121 *Id.* at 1:43-2:11.

122 Test. at 9:58:36-9:58:45.

123 *Hicks*, 2019 WL 2905047, at*11 (running passenger background and criminal history "parallel to" investigation into driver did not prolong the traffic stop).

124 *Rodriguez*, 575 U.S. at 349 distinguishing the facts of *Pennsylvania v. Mimms*, *supra*, 434 U.S. at 110.

125 *Id.* at 354 (internal citation omitted).

1 burdensome precautions in order to complete his mission”¹²⁶ Given that Officer Turley was
 2 alone, at midnight, on a street where cars do not typically stop, speaking with three individuals in a
 3 car with its lights off and in no distress, which could, presumably, have stopped in a lawful location
 4 (such as parking in a lot associated with the Budget Suites or the apartment complex nearby), the
 5 less than one minute safety related inquiry did not measurably prolong this traffic stop.¹²⁷

6 Defendant contends that these inquiries were unrelated to writing Defendant a traffic ticket.
 7 Even if true, Defendant fails to consider the safety issue facing Turley given the recognized danger
 8 associated with even ordinary traffic stops. There is no evidence that Officer Turley sought to make
 9 inquiries to detect additional or general criminal activity. Indeed, the only evidence comes from
 10 Turley’s testimony that consistently and only refers to gathering information for safety purposes.
 11 Further, there is no evidence that the mission of the traffic stop had ended at the point that Officer
 12 Turley requested identification information from the passengers. Indeed, requesting passenger
 13 identification occurred before Turley returned to his patrol vehicle to review Defendant’s driver’s
 14 license and warrant status.¹²⁸

15 Turley was never asked if he intended to write Defendant a ticket, but only that once he
 16 learned through his records check that Defendant was a felon, whether he would place Defendant
 17 under arrest.¹²⁹ At that juncture, the traffic stop ripened into one of probable cause to arrest
 18 Defendant who had committed a felony.¹³⁰ In neither his Motion nor during the evidentiary hearing
 19 did Defendant argue that Officer Turley lacked probable cause to arrest Defendant. In fact,
 20 Defendant does not mention this fact at all and instead argued that Turley did not need passenger
 21 identification to write Defendant a ticket.¹³¹ Defendant’s ignores (1) the importance of Turley’s
 22 safety, (2) that the inquiries into the passengers’ identification took less than one minute, (3) there

23 ¹²⁶ *Id.* at 356 (internal citation omitted).

24 ¹²⁷ Body Cam at 1:23-2:11.

25 ¹²⁸ Body Cam at 1:18-2:12.

26 ¹²⁹ Test. at 10:02:28-10:02:42; 10:30:45-10:30:51.

27 ¹³⁰ “Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient
 28 to lead a person of reasonable person to believe that an offense has been or is being committed by the person being
 arrested.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007) (citation omitted). “Alternatively, [the Ninth
 Circuit] has defined probable cause as follows: when under the totality of circumstances known to the arresting officers,
 a prudent person would have concluded that there was a fair probability that the defendant had committed a crime.” *Id.*
 (citation, bracket added, and internal brackets omitted).

¹³¹ Closing at 12:56:57-12:57:05.

1 was no objection by the passengers to Turley's requests, (4) Ninth Circuit case law establishing that
 2 asking for passenger identification is not an unlawful Fourth Amendment search or seizure, and (5)
 3 that when Turley returned to his vehicle he did exactly what he was supposed to do—ran Defendant's
 4 driver's license in his car's computer and looked for warrants.

5 It is simply untenable that to ensure compliance with *Rodriguez*, Officer Turley had to
 6 complete the traffic stop by writing a ticket while ignoring information on his mobile data terminal
 7 establishing probable cause to arrest Defendant. "When police have reasonable suspicion to conduct
 8 a Terry stop, 'founded suspicion to stop for an investigatory detention may ripen into probable cause
 9 to arrest through the occurrence of facts or incidents after the stop.'"¹³² Although these citation
 10 precede the Supreme Court decision in *Rodriguez*, none has been reversed. Further, there is nothing
 11 about the general proposition that the mission of a traffic stop may ripen into probable cause to arrest
 12 that demonstrates a violation of *Rodriguez* so long as, when all the facts are considered, the Court
 13 finds that prior to the ripening of events there was no impermissible prolongation of the traffic stop.
 14 To hold otherwise would suggest that upon an officer discovering an active warrant for a driver after
 15 making a lawful traffic stop, an officer could not abandon the mission of the stop to make an arrest.

16 Again, the Court finds there was no prolongation of the traffic stop between the time Officer
 17 Turley first approached Defendant's vehicle¹³³ and when he discovered defendant committed felony
 18 by failing to register as a sex offender as required by NRS 179D.550.¹³⁴ The mission of the traffic
 19 stop had not ended when Turley returned to his vehicle to review information appearing on his
 20 computer screen. The request for passenger information was reasonable and safety related given the
 21 hour of the day, location of the car, Turley's experience patrolling the area, and that there was no
 22 evidence that the car (or its passengers) were in any distress.

23
 24
 25
 26 ¹³² *Hernandez v. Kunkle*, Case No. C12-178-RSM, 2013 WL 179546, at *4 (W.D. Wash. Jan. 15, 2013) citing
 27 *United States v. Greene*, 783 F.2d 1364, 1368 (9th Cir.1986) (citing *United States v. Medina-Gasca*, 739 F.2d 1451,
 1453 (9th Cir.1984); see also *Houston v. Clark County Sheriff Deputy John Does 1–5*, 174 F.3d 809, 814 (6th Cir.1999)
 (collecting cases).

28 ¹³³ Body Cam at 00:37.

¹³⁴ *Id.* at 3:43.

1 2. *Turley did not do an impermissible criminal background check on Defendant.*

2 It is well settled that law enforcement officers may not prolong a traffic stop to do criminal
3 history checks or gather “evidence of ordinary criminal wrongdoing.”¹³⁵ Neither of these events
4 occurred here.

5 In *Evans*, the Ninth Circuit considered whether to suppress evidence discovered after making
6 a valid traffic stop of a known drug dealer. Following the traffic stop, law enforcement ran a records
7 check to confirm Evans had a valid driver’s license and no outstanding warrants.¹³⁶ Officers also
8 ran an ex-felon check and deployed a K-9 to sniff around the car (all of which took about 24
9 minutes).¹³⁷ This police activity ultimately led to an indictment for conspiracy to distribute
10 methamphetamines, possession with intent to distribute methamphetamines, and carrying a gun
11 “during and in relation to a drug trafficking crime.”¹³⁸ On appeal, the court found “that ... by
12 conducting an ex-felon registration check and a dog sniff, both of which were unrelated to the traffic
13 violation for which” Evans was stopped, law enforcement “prolonged the traffic stop beyond the
14 time reasonably required to complete . . . [the] traffic mission, and so violated the Fourth
15 Amendment, unless there was independent reasonable suspicion justifying each prolongation.”¹³⁹
16 The court explained that the ex-felon check was “wholly unrelated” to the mission of ensuring cars
17 on the road are “operated safely and responsibly.”¹⁴⁰ Instead, the purpose of this check was to detect
18 “evidence of ordinary criminal wrongdoing.”¹⁴¹ In fact, the on-scene law enforcement officer
19 testified at the evidentiary hearing that he believed there was “something more than a simple traffic
20 violation” at issue, and admitted that the gathering of information “had no relation to the traffic
21 violation or” the driver’s whereabouts.¹⁴²

22 The facts before this Court substantially differ from those in *Evans*. Here, Officer Turley
23 did one query by entering Defendant’s driver’s license into the blank box that appeared on the
24

25 ¹³⁵ *United State v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015).

26 ¹³⁶ *Id.* at 782.

27 ¹³⁷ *Id.* at 782-784.

28 ¹³⁸ *Id.* at 784.

¹³⁹ *Id.* at 786 (citations and internal quote marks omitted).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (citations and internal quote marks omitted).

¹⁴² *Id.* at 786-87.

1 computer in his patrol vehicle.¹⁴³ The query was entered on the same screen Turley uses in all traffic
 2 stops.¹⁴⁴ The terminal automatically generated a list of sources including Nevada DMV, LVMPD
 3 Scope, NCIC, and NCJIS.¹⁴⁵ When Turley highlighted one of the source entities on the list, the
 4 system automatically displayed information from that source on the bottom of his screen.¹⁴⁶ This is
 5 how Turley looks for driver information and warrants in all traffic stops.¹⁴⁷ The Body Camera shows
 6 Turley highlighted NCJIS and, without delay, found Defendant's outstanding felony.¹⁴⁸ This is the
 7 same location Turley would look for warrants, and Turley did no special search to find this
 8 information.¹⁴⁹ Turley's testimony is uncontroverted. Running a routine check on a defendant's
 9 record is not prohibited by *Rodriguez*. As shown in the Body Camera footage, the information at
 10 the bottom of Turley's computer screen is minimal, and that Turley used his thumb to review
 11 information not appearing just at the bottom of his screen does not support the conclusion that Turley
 12 was doing a general criminal background check or attempting to gather evidence of ordinary criminal
 13 wrongdoing. To the contrary, all Turley stated he was doing was looking for warrants.¹⁵⁰ As stated
 14 in *Hicks*, "even after *Rodriguez*, the Fourth Amendment is not as persnickety as" Defendant
 15 asserts.¹⁵¹

16 The Court finds that the review done by Turley, following his routine records search on
 17 Defendant, did not violate the Fourth Amendment. There is no evidence to support the conclusion
 18 that Officer Turley's search measurably or impermissibly prolonged the traffic stop or that he was
 19 searching for Defendant's general criminal background or to discovery other criminal wrongdoing.
 20
 21
 22

23 ¹⁴³ Body Cam at 3:20. During testimony, Turley explained he initially entered Defendant's driver's license
 24 information wrong and had to reenter it.

25 ¹⁴⁴ Test. at 10:29:30-10:29:14.

26 ¹⁴⁵ *Id.* at 10:00:50-10:01:04; 11:03.

27 ¹⁴⁶ *Id.* at 11:26:13-11:26:56.30.

28 ¹⁴⁷ *Id.* at 10:00:27-10:00:42; 10:01:04-10:01:16; 10:01:44-10:02:23; 10:29:03-10:29:14; 10:30:12-10:30:22;
 11:34:00-11:34:06.

¹⁴⁸ Body Cam at 3:30-3:44.

¹⁴⁹ *Id.* at 10:01:05-10:01:16; 10:02:05-10:02:12; 10:29:28-10:29:45; 10:30:12-10:30:22.

¹⁵⁰ *Id.* at 10:00:27-10:00:42.

¹⁵¹ *Hicks*, 2019 WL 2905047, at *12.

1 C. The inventory search of Defendant's car is challenged as an extension of an alleged
 2 impermissibly prolonged traffic stop.

3 Inventory searches are a well accepted "exception to the warrant requirement[but that] . . .
 4 they must be performed in strict accord with the police department's constitutionally sufficient[]
 5 standard procedure to ensure that the search is not just a ruse for a general rummaging to discovery
 6 incriminating evidence."¹⁵² Here, there is no dispute that the inventory search of Defendant's vehicle
 7 "was conducted in accordance with LVMPD's standard procedure." As Officer Turley explained,
 8 he called for a tow because he had probable cause to arrest Defendant, the car was illegally parked,
 9 and no other occupant of the car had a driver's license.¹⁵³ The upcoming tow prompted the required
 10 pre-tow inventory search. There is nothing in Defendant's Motion to Suppress, Reply brief, cross-
 11 examination of Officer Turley or closing argument that suggests or infers the inventory search was
 12 conducted in a manner that violated the Fourth Amendment. Rather, it is that the inventory search
 13 was done after what Defendant contends is an impermissibly prolonged traffic stop that supposedly
 14 taints the search.

15 Because the only licensed driver of a car illegally parked on a public roadway was arrested,
 16 and there was no impermissible prolongation of the preceding traffic stop, Officer Turley properly
 17 called for a tow, and the pre-tow inventory was lawfully conducted. The discovery of two firearms
 18 located during the lawful inventory search did not violate the Fourth Amendment. Thus, there is no
 19 reason to suppress the evidence found during the inventory search.

20 **IV. RECOMMENDATION**

21 Accordingly, IT IS HEREBY RECOMMENDED that Defendant's Motion to Suppress
 22 Evidence (ECF No. 32) be DENIED.

23 Dated this 22nd day of March, 2021.

24 
 25 ELAYNA J. YOUCHAK
 26 UNITED STATES MAGISTRATE JUDGE

27 ¹⁵² *United States v. Gibson*, Case No. 2:16-cr-00333, 2017 WL 3438450, at *4 (D. Nev. August 10, 2017) (citations
 28 omitted); *U.S. v. Centers*, Case No. 2:13-cr-0125, 2013 WL 7019875, at *9 (D. Nev. December 19, 2013) ("an inventory
 search must not be a ruse for a general rummaging in order to discover incriminating evidence").

¹⁵³ Test. at 10:07:42-10:08:47.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).